

satellite operators in the L-band should comply with priority and preemptive access requirements for aeronautical safety services and relay service requirements. We will address issues relating to fees in a separate proceeding.

174. In responding to assertions that all satellite operators, regardless of whether they provide interstate telecommunications, should be required to contribute to universal service support mechanisms, we rely on the Commission's analysis in the *Universal Service Report and Order*.³⁴³ In that *Order*, the Commission determined that, pursuant to Section 254 of the Act, carriers that provide only international telecommunications but not interstate telecommunications services, are not required to contribute to universal service support mechanisms.³⁴⁴ The Commission recognized that, by this decision, some providers of international service would be required to contribute and some would not. Expressing a preference for a more competitively neutral outcome, the Commission concluded, nonetheless, that Section 254 of the Act does not permit us to assess contributions on the revenues of carriers that do not provide interstate telecommunications. Further, however, the Commission stated that, should the competitive concerns arising from this decision become significant, it would revisit the issue. In addition, it is noteworthy that some parties have petitioned the Commission to reconsider this decision. Finally, the Commission's interpretation of Section 254 of the Act does not, contrary to the assertion of parties, violate national treatment obligations, because any carrier, regardless of where it is licensed or located, that provides both interstate and foreign telecommunications services must contribute to the extent that it provides both interstate and foreign telecommunications.

5. Foreign and Domestic Policy Factors

Background

175. In both the *Notice* and *Further Notice*, the Commission proposed to examine other factors that bear on whether the grant of the application is in the public interest, convenience and necessity.³⁴⁵ The *Notice* specifically noted that we would consider issues of national security, law enforcement, foreign policy and trade policy brought to our attention by the Executive Branch in reviewing license applications.

³⁴³ *Universal Service Report and Order* at ¶ 779.

³⁴⁴ 47 U.S.C. § 254(d). Section 254(d) of the Act states:

Every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, . . . to preserve and advance universal service.

³⁴⁵ *Notice* at ¶ 48; *Further Notice* at ¶ 15.

Positions of the Parties

176. Executive Branch commenters strongly support our consideration of these additional public interest factors.³⁴⁶ Lockheed Martin acknowledge both the validity of national security and law enforcement concerns, while Deutsche Telekom notes that examination of national security concerns is permitted by the GATS in very narrow circumstances.³⁴⁷

177. Many other commenters object to the Commission's proposal to consider foreign policy and trade policy issues raised by the Executive Branch in determining whether to grant access to non-U.S. satellites systems, on the grounds that such considerations are inconsistent with GATS obligations.³⁴⁸ For example, the Government of Japan takes particular issue with considering foreign policy and trade concerns, arguing that we should eliminate those from consideration.³⁴⁹ Similarly, Skybridge states that denial of a license to a WTO satellite system based on either foreign policy or trade concerns would raise serious questions with respect to U.S. compliance with the GATS. According to Skybridge, discriminatory treatment of prospective licensees from WTO Members based on trade concerns is essentially a repudiation of MFN treatment.³⁵⁰ France Telecom and Lockheed Martin also argue that the Commission must be very careful that this assessment is neither used nor perceived as a surrogate for considerations of trade issues that were put to rest with the U.S. commitment in the WTO Basic Telecom Agreement to open our telecommunications market.³⁵¹

Discussion

178. We agree with comments of the Executive Branch supporting consideration of national security, law enforcement, foreign policy and trade policy concerns. In general, objections to the Commission considering these issues focus on inconsistency with the GATS.

³⁴⁶ DOD FNPRM Comments at 3-4; USTR FNPRM Reply Comments at 4-5.

³⁴⁷ Lockheed Martin FNPRM Reply Comments at 5-6; Deutsche Telekom FNPRM Reply Comments at 12 (arguing that the GATS Agreement contains a very specific exception under which a WTO Member country may act on behalf of its national security).

³⁴⁸ Government of Japan FNPRM Comments at 2; Telesat FNPRM Comments at 5; Lockheed Martin FNPRM Comments at 5; ICO FNPRM Comments at 10; Skybridge Comments at 3; AirTouch FNPRM Comments at 2; Deutsche Telekom FNPRM Reply Comments at 11; GE Americom FNPRM Reply Comments at 4; France Telecom FNPRM Reply Comments at 3-4; Lockheed Martin FNPRM Reply Comments at 5.

³⁴⁹ Government of Japan FNPRM Comments at 2.

³⁵⁰ Skybridge FNPRM Comments at 3-4.

³⁵¹ France Telecom FNPRM Reply Comments at 4; Lockheed Martin FNPRM Reply Comments at 5.

We conclude that nothing in the GATS precludes us from considering such concerns. There is no bar in GATS Article VI (Domestic Regulation) as long as our consideration is objective, transparent, impartial and reasonable. Nor does the MFN obligation automatically bar consideration of any particular factor. It provides merely that like service suppliers have to receive like treatment. Similarly, the national treatment obligation does not exclude consideration of these other public interest factors. In a particular case, where we do consider these other public interest factors, we will be mindful of U.S. WTO obligations to the extent that the exemptions in the GATS specifically do not apply.³⁵² We do not expect to receive recommendations from the Executive Branch in connection with these other public interest factors that are inconsistent with U.S. international obligations.

179. We recognize that other federal agencies have specific expertise in matters that may be relevant in particular cases. In any given case, an application by a foreign applicant may raise questions, for example, about this country's international treaty obligations. In addition, we realize that foreign participation in the U.S. telecommunications and satellite market may implicate significant national security or law enforcement issues uniquely within the expertise of the Executive Branch. The Commission will consider any such legitimate concerns as we undertake our own independent analysis of whether grant of a particular authorization is in the public interest.

180. We emphasize, however, that we expect national security, law enforcement, foreign policy and trade policy concerns to be raised only in very rare circumstances. Contrary to the fears of some commenters, the scope of concerns that the Executive Branch will raise in the context of applications for earth station licenses is narrow and well defined. National security and law enforcement concerns have long been treated as important public interest factors by this Commission.³⁵³ We note that, during our two years' experience in administering the *Foreign Carrier Entry Order*, with approximately 140 authorizations granted to carriers with foreign ownership, the Executive Branch has never asked the Commission to deny an application on national security or law enforcement grounds. Similarly, we note that the Executive Branch, during the last two years, has never informed us that a foreign policy concern dictated that a Section 214 or Section 310(b)(4) application be denied. We expect this pattern to continue, such that the circumstances in which the Executive Branch would advise us that a pending matter affects national security, law enforcement, or obligations arising from international agreements to which the United States is a party will be quite rare. Any such input would, however, be important to our public interest analysis of a particular application. We thus will continue to accord deference to the expertise of Executive Branch agencies in identifying and interpreting issues of concern related to national security, law enforcement, and foreign policy that are relevant to an application pending before us.

³⁵² See GATS Articles XIV and Article XIV *bis*.

³⁵³ *Id.*

181. USTR has asked, after coordination with other Executive Branch agencies, the Commission on four occasions during the last two years not to act on certain applications because of trade concerns.³⁵⁴ We note that all these requests occurred before the effective date of the WTO Basic Telecom Agreement. The Agreement changes the U.S. Government's trade obligations affecting basic telecommunications services. USTR has indicated that it expects any Executive Branch concerns communicated to the Commission under our new rules to be fully consistent with U.S. law and international obligations, including the WTO Basic Telecom Agreement. USTR has also specified the scope of its authority to communicate trade policy concerns to the Commission in its reply comments.³⁵⁵ In light of the WTO Basic Telecom Agreement, we expect to receive input from USTR on specific applications far less often than we have in the past. We will continue to evaluate any such input as part of our public interest determination, consistent with U.S. law and U.S. international obligations, including the WTO Basic Telecom Agreement.

182. We emphasize that the Commission will make an independent decision on applications to be considered and will evaluate concerns raised by the Executive Branch agencies in light of all the issues raised (and comments in response) in the context of a particular application. We expect that the Executive Branch will advise us of concerns relating to national security, law enforcement, foreign policy, and trade concerns only in very rare circumstances. Any such advice must occur only after appropriate coordination among Executive Branch agencies, must be communicated in writing, and will be part of the public file in the relevant proceeding.³⁵⁶

³⁵⁴ Letter from Jeffrey M. Lang, Deputy United States Trade Representative, to Roderick K. Porter, Deputy Chief, International Bureau, Federal Communications Commission (Aug. 8, 1996); Letter from Donald S. Abelson, Chief Negotiator, Communications and Information, United States Trade Representative, to Roderick K. Porter, Deputy Chief, International Bureau, Federal Communications Commission (Oct. 3, 1996); Letter from Donald S. Abelson, Chief Negotiator, Communications and Information, United States Trade Representative, to Roderick K. Porter, Deputy Chief, International Bureau, Federal Communications Commission (Oct. 31, 1996); Letter from Larry Irving, Assistant Secretary, National Telecommunication and Information Administration, Department of Commerce, Jeffrey M. Lang, Deputy United States Trade Representative, and Ambassador Vonya McCann, U.S. Coordinator, International Communications and Information Policy, Department of State, to Reed Hundt, Chairman, Federal Communications Commission (Mar. 7, 1997).

³⁵⁵ USTR *Foreign Participation* Reply Comments at 6 n.11.

³⁵⁶ To the extent the Executive Branch must share classified information with Commission staff, such information is not subject to public disclosure.

C. Access Procedures

1. Framework

183. To implement our framework allowing non-U.S. satellites to serve the United States, we must adopt licensing procedures that ensure that prospective foreign providers receive fair consideration. In both the *Notice* and *Further Notice*, the Commission stated that it did not intend to issue separate (and duplicative) U.S. licenses for those space stations under the jurisdiction of another licensing or coordinating administration. Instead, it envisioned two procedural avenues by which foreign space stations could serve the U.S. market.³⁵⁷

184. The first procedure would be used when the service provider or satellite operator participates in a U.S. space station "processing round" as a means of ensuring that an existing or planned foreign satellite will have access to the orbit or spectrum resources needed to serve the United States. The Commission generally considers applications for satellite systems that will operate in the same frequency bands in discrete processing rounds to ensure that all potentially competing applications are considered concurrently. These processing rounds are established by Public Notices announcing a "cut-off date" for filing applications to be considered in the round. In order to participate in a space station processing round, the Commission proposed to permit a service supplier to file an application for a U.S. earth station that would operate with a foreign satellite by the cut-off date specified in the Public Notice. Alternatively, the foreign space station operator could file, by the cut-off date, a "letter of intent" to use its non-U.S. satellite to provide service in the United States through future earth stations that may or may not be ultimately licensed to it.

185. Once a request for U.S. access through a non-U.S. licensed satellite is properly before it in a processing round, the Commission would consider it, together with any applications for U.S.-licensed satellites that are properly filed.³⁵⁸ If, in processing that group, the Commission authorizes a non-U.S. satellite to serve the United States, it will provide this authority, in an earth station license or, in the case of a letter of intent, as a "reservation" or

³⁵⁷ *Notice* at ¶¶ 13-15; *Further Notice* at ¶¶ 47-49.

³⁵⁸ Applicants wishing to use non-U.S. licensed satellites will generally be required to provide the information listed in Section 25.114 of our rules, 47 CFR § 25.114. We will however, not require foreign applicants to provide financial information if the non-U.S. licensed satellite is in-orbit and operating or to provide technical information when the international coordination process for the non-U.S. satellite has been completed. See Section III.C.2.

"designation" of frequencies or orbit locations or both, in the attendant service Report and Order.³⁵⁹

186. The second procedure by which the Commission could consider foreign requests for U.S. access involves the earth station licensing process independent of a processing round. In the *Further Notice*, the Commission noted its expectation that this procedure would be used where an earth station to be located in the United States seeks to access a non-U.S. satellite that is already operating and for which the international coordinated process, pursuant to the regulations of the International Telecommunication Union (ITU), has been initiated.³⁶⁰ There, it would grant an earth station license provided that the proposed system met our public interest analysis.

187. The commenters support the proposal not to re-license non-U.S. satellites. They also support our proposal to permit foreign satellites access to the United States through an earth station license.³⁶¹ No one objects to the alternative proposal to allow foreign satellite operators to participate in Commission space station processing round by filing a letter of intent to use the satellite to provide service in the United States. Indeed, Hughes notes that it favors the flexibility that would be afforded to non-U.S. system operators by alternative licensing procedures.³⁶²

188. Consequently, we adopt our proposed procedural framework for accessing the U.S. market. We will not issue a separate, and duplicative, U.S. license for a non-U.S. space station. Issuing a U.S. license would raise issues of national comity, as well as issues regarding international coordination responsibilities for the space station. We will, instead, license earth stations located within U.S. territory to communicate with particular non-U.S. satellites. As with other U.S.-licensed earth stations, we will not require the prospective earth station operator to obtain a construction permit. Rather, the applicant may begin construction before it obtains a station operating license at its own risk. We also adopt our proposal to implement a procedural framework that allows space station operators and service providers two methods for accessing the U.S. market through a non-U.S. satellite: (1) by participating in a U.S. space station processing round through an earth station application or letter of intent; or (2) by filing an earth station application that we may consider independent of a processing round.

³⁵⁹ We reiterate our intent to hold non-U.S. satellite operators to the same rules as we do our U.S.-licensed space station operators. Failure to comply with these requirements could result in revocation of the earth station license or reassignment of previously reserved or designated spectrum or orbit locations.

³⁶⁰ *Further Notice* at ¶ 55.

³⁶¹ See, e.g., Telesat FNPRM Comments at 7; Loral FNPRM Comments at 21; Hughes FNPRM Comments at 21-24.

³⁶² Hughes FNPRM Comments at 18-19.

2. Information Requirements

189. Regardless of which procedural avenue prospective foreign service suppliers choose to request access to the U.S. market, the Commission proposed to require these suppliers to provide detailed information about the non-U.S. space station and its operator.³⁶³ The purpose is to allow the Commission to determine whether operations via the non-U.S. satellite system comply or will comply with all Commission technical requirements, and that earth and space station operators meet all other applicable Commission qualification requirements. Specifically, the Commission proposed that all earth station applications and letters of intent be accompanied by an exhibit containing the information required by Section 100.13 (for DBS satellites) or Section 25.114 (for all other satellites) of its rules with respect to the proposed non-U.S. satellite, together with an ECO-Sat showing if appropriate.³⁶⁴ The Commission stated that this information would be used to perform spectrum management functions and to evaluate additional factors relevant to whether grant of access would be in the public interest. The Commission further stated that failure to require this information could constitute treatment more favorable for non-U.S. systems than for applicants seeking U.S. space station licenses. Nevertheless, the Commission said it would not require applicants to provide financial information if the non-U.S. licensed satellite is in-orbit or to provide technical data when the international coordination process between the United States and the licensing administration has been completed.³⁶⁵

190. Several commenters take issue with this proposal, arguing that requiring the proposed information constitute re-licensing.³⁶⁶ This information, however, is necessary to ensure compliance with each of the Commission requirements that, as discussed above, will apply to non-U.S. satellites. We can only determine whether service by a non-U.S. satellite in the United States is in the public interest if we have before us all the information we require U.S. applicants to provide. We will, therefore, require all entities wishing to serve the United States with a non-U.S. satellite, regardless of whether the satellite is already licensed by another administration, to file, together with their earth station applications or letters of intent, an exhibit providing the information required in Section 100.13 for DBS satellites or an exhibit providing the information required in Section 25.114, including FCC Form 312, for all other satellites. We also require an ECO-Sat analysis (or ECO-Sat analyses), when appropriate.

191. We will not, however, require entities to file financial information if the non-U.S. licensed satellite is in-orbit, or to file technical data when the international coordination

³⁶³ *Further Notice* at ¶ 60.

³⁶⁴ 47 CFR §§ 25.114 and 100.13.

³⁶⁵ *Further Notice* at n.44, 50.

³⁶⁶ GE Americom FNPRM Comments at 9-10; Hughes FNPRM at 17.

process for the non-U.S. satellite has been completed.³⁶⁷ First, where the international technical coordination process has been *completed* between the United States and the foreign satellite, we would not need additional technical information about the foreign satellite. This is because the United States and the relevant foreign administration will have exchanged extensive technical data about their respective systems during the course of the bilateral negotiations that lead up to a coordination agreement. This technical information is sufficient for us to determine whether the foreign satellite complies with Commission technical requirements. In all other cases, however, we would not have this information unless we specifically required the potential service supplier to file it. Similarly, where the foreign satellite is already in-orbit, there is no concern about whether the prospective entrant is financially capable of building and launching its system. Consequently, financial information is unnecessary in that instance.

192. We will streamline these procedures further where the Commission has already authorized a particular foreign satellite to provide a particular service in the United States. For example, if the Commission has authorized a satellite licensed to Country X to provide DTH service in the United States, we have determined, in the course of our review, that the foreign satellite system complies with all applicable Commission requirements and that Country X meets the ECO-Sat test. There is no need to require future earth station applicants to continue to provide this information. Rather, in those cases, we will allow the prospective foreign entrant to include an exhibit citing to the previous Commission grant of access for that satellite, and representing that it intends to use the satellite to provide the same services as those previously authorized, and that none of the system's operating parameters has changed.

3. Licensing and Coordination Status of Non-U.S. Satellites

Background

193. In the *Further Notice*, the Commission asked whether the non-U.S. satellite's licensing or international coordination status should be relevant in determining whether an earth station application or letter of intent is properly before us. In other words, the Commission asked whether it should consider granting access to a foreign satellite that is not yet licensed or that is not yet fully coordinated. The Commission indicated in the *Further Notice* that it would not necessarily require the foreign space station to be licensed before it would consider whether to allow that satellite access to the United States. Rather, the Commission proposed that non-U.S. satellites be eligible to participate in a processing round as long as its operator is *pursuing* a license from another administration. The Commission

³⁶⁷ *Further Notice* at ¶ 53-54.

also proposed that it would consider earth station applications outside of a processing round if the satellite is already licensed and/or fully coordinated in accordance with ITU regulations.³⁶⁸

Positions of the Parties

194. Loral argues that the Commission should not accept requests to access non-U.S. satellites unless the satellites have already been licensed.³⁶⁹ It contends that this approach is necessary to avoid having to revoke authority to serve the United States in situations where the foreign administration does not grant the license. In contrast, Columbia and Lockheed Martin suggest that a space station license grant from a foreign administration should not be necessary. Rather, they recommend that a non-U.S. applicant submit, as part of its application to the Commission, proof of its filing of an application with a foreign administration.³⁷⁰

Discussion

195. Generally, we require a space station to be licensed before we will license any earth station to communicate with that satellite. This prevents two possibilities: (1) that we will later have to revoke the earth station license if the space station is not ultimately licensed; and (2) that we will later need to act on an application to modify the earth station to reflect changes in the space station's operating parameters made during the licensing process, as is often the case. Accordingly, when U.S. companies file earth station applications to access U.S. space stations that have not yet been licensed, we return the applications as premature or dismiss them without prejudice.

196. Similarly, we will require the foreign space station to be licensed, or fully coordinated in those administrations that do not issue satellite licenses, in cases where an earth station operator seeks an immediate grant to access that satellite. If the space station is not licensed or coordinated, we will dismiss the earth station application, which may be refiled after the space station is licensed or coordinated. In contrast, we will not require a license as a prerequisite to participating in a U.S. space station processing round. Doing so would put prospective foreign entrants at a disadvantage. As noted, the Commission generally authorizes satellites in the context of discrete processing rounds. These processing rounds often involve new, innovative, and commercially unproven satellite services in frequency bands not previously used to provide satellite service. We generally attempt to license, from the group of pending applications, the maximum number of systems that can be accommodated in the available spectrum. If a prospective foreign entrant does not participate in a processing round, it runs the risk of being foreclosed from providing service in the

³⁶⁸ *Further Notice* at ¶¶ 49 and 52.

³⁶⁹ Loral FNPRM Comments at 24-25.

³⁷⁰ Columbia FNPRM Comments at 8; Lockheed Martin FNPRM Reply Comments at 4.

United States in those bands because we cannot accommodate any additional systems. Requiring the foreign entrant to secure a license from another administration *before* it can participate in a U.S. processing round, however, would place a burden on the foreign operator not placed on U.S. applicants. Instead, we will require a potential foreign entrant to submit, as part of its application to the Commission, proof that it is pursuing a license from a foreign administration.

4. Receive-Only Earth Stations

Background

197. Receive-only earth stations are used predominantly to receive direct-to-home video services, such as DTH and DBS services. In the *Notice* and *Further Notice*, the Commission proposed to continue to license receive-only earth stations operating with non-U.S. satellites, whether operating with WTO or non-WTO member satellites.³⁷¹ In doing so, the Commission recognized that it does not require receive-only earth stations receiving U.S.-originated signals over U.S. satellites to be licensed. The Commission noted that licensing receive-only stations operating with non-U.S. satellites was necessary to ensure that the station's operation would facilitate competition in the United States by considering public interest factors such as equivalent competitive opportunities in the home market and content regulation. The Commission also noted that such licensing is the only regulatory point available to the Commission because it will not be issuing U.S. licenses to space stations licensed or coordinated by other administrations. The Commission proposed, however, to eliminate the licensing requirement for receive-only earth stations operating with U.S.-licensed systems for the reception of signals originating in other countries. The Commission reasoned that its technical and other concerns would be taken into account when it granted the space station license.

Positions of the Parties

198. Hughes, PanAmSat, Space Communications, and AMSC support the proposal to continue to license receive-only earth stations operating with non-U.S. satellites.³⁷² Hughes argues that, absent licensing of the earth station used to access the foreign satellite, the Commission has no recourse against a non-U.S. satellite causing interference to other operations in the United States. AMSC similarly argues that, because the Commission has jurisdiction over the operation of satellite systems that provide service in the United States, it may choose to regulate the receive-only terminals instead of the space segment. Hughes and PanAmSat further argue that licensing receive-only earth stations would not violate national

³⁷¹ *Notice* at ¶¶ 75-80; *Further Notice* at ¶¶ 56-57.

³⁷² Hughes FNPRM Comments at 21-24; PanAmSat FNPRM Comments at 9; Space Communications FNPRM Reply Comments at 12; AMSC FNPRM Reply Comments at 11.

treatment obligations because most services involving receive-only earth stations are exempt from the WTO Basic Telecom Agreement.

199. In contrast, GlobeCast and Loral oppose licensing receive-only earth stations.³⁷³ Arguing that receive-only earth stations are passive and cannot cause interference to other radio stations, GlobeCast claims that international receive-only earth stations that are not subject to any international treaty restrictions should be free to operate without a license. It further claims that after the WTO Basic Telecom Agreement, the United States "no longer needs the market leverage that arguably was a reason to continue licensing international receive-only earth stations."³⁷⁴ Loral argues that, if the non-U.S. satellite has been coordinated with the United States pursuant to ITU procedures, its operations in the United States should not cause interference or technical concerns. Loral recommends that, if the transmissions from the foreign satellite have not been coordinated, the Commission should require the satellite operator to file a letter of intent to serve the U.S. market, including copies of the appropriate ITU filings.

200. Telesat Canada, TMI, and France Telecom argue that under our GATS national treatment obligations, we cannot require licensing of receive-only earth stations accessing non-U.S. satellites.³⁷⁵ Telesat further states that removing the licensing requirement for receive-only earth stations operating with U.S. satellites has been a "progressive step in the promotion of competition through the streamlining of regulation," and that the same should be done for receive-only earth stations operating with non-U.S. satellites.³⁷⁶ In addition, TMI argues that deregulating receive-only mobile terminals would end the discriminatory treatment of these terminals compared to terminals for paging and similar message services, which, like customer premises equipment, are not licensed by the Commission.³⁷⁷

Discussion

201. In proposing continued licensing for receive-only earth stations operating with non-U.S. satellites, the Commission's intent was to provide a vehicle by which we could examine factors specific to the non-U.S. *satellite*, such as equivalent competitive opportunities in the home market, content regulation, and spectrum management and other technical

³⁷³ GlobeCast FNPRM Comments at 5; Loral Comments at 32.

³⁷⁴ GlobeCast FNPRM Comments at 5.

³⁷⁵ Telesat FNPRM Comments at 9-10; TMI FNPRM Comments at 11; France Telecom FNPRM Reply Comments at 5.

³⁷⁶ Telesat FNPRM Comments at 9-10; TMI FNPRM Comments at 11-14; France Telecom FNPRM Comments at 5-6.

³⁷⁷ TMI FNPRM Comments at 13.

considerations. It also was to provide the Commission with a regulatory control point for transmissions entering the United States through foreign satellites.³⁷⁸ In short, the Commission proposed to license the receive-only terminal because we would *not* be licensing the satellite with which that earth station would be operating. If the downlink transmissions from the non-U.S. satellite interferes with other U.S. downlink transmissions, for example, licensing the earth station would provide us with our only means of maintaining control over the interfering transmissions into the United States. In addition, licensing the earth station would provide the only vehicle by which to evaluate effective competitive opportunities in foreign markets and other public interest considerations. We find that these concerns present a compelling argument to continue to require operators of receive-only earth stations operating with non-U.S. licensed satellites to obtain earth station licenses.

202. In contrast, in cases where the Commission *is* licensing the space station, we see no need to continue to license the receive-only earth station operating with that satellite, even if the transmissions originate in another country. Consequently, we adopt our proposal to eliminate the licensing requirement for all receive-only earth stations operating with U.S.-licensed satellites, regardless of where the signals originate.

203. We find that a continued licensing requirement for receive-only earth stations operating with non-U.S. satellites does not violate any of the United States' GATS obligations. When the earth stations are used to receive direct-to-home video (or in the future, audio) services, as are the vast majority, such treatment would not implicate any national treatment obligations under the WTO Basic Telecom Agreement and the GATS. As noted above, the United States undertook no obligations with respect to these services. Indeed, even with covered services, such as one-way satellite paging services, where we will not apply an ECO-SAT test, we would not be violating a national treatment obligation. For receive-only earth stations accessing either U.S. or non-U.S. satellites, we need to make sure that there is no interference, and evaluate other public interest factors. For receive-only earth stations communicating with U.S. licensed space stations, we are able to do so through the space station licensee. For receive-only earth stations communicating with non-U.S. space stations, however, we would not be able to look to the space station operator because we will not be licensing it. Thus, as described above, licensing the receive-only earth station provides us the necessary mechanism to make our treatment of foreign-licensed satellites comparable. We find that this is consistent with the GATS. As USTR points out, GATS treatment need not be identical. The issue is whether the conditions of competition have been modified to favor certain foreign or domestic suppliers.³⁷⁹ That is not the case here.

204. To impose the least burdensome requirements possible while fulfilling our regulatory responsibilities, we will permit applicants to request "blanket" licenses for large

³⁷⁸ Notice at ¶ 75; Further Notice at ¶¶ 56-58.

³⁷⁹ USTR FNPRM Reply Comments at 11, n.16.

numbers of technically identical receive-only antennas, such as home "dishes." Blanket applications may be filed by the space station operator, the service supplier, the equipment manufacturer, or the electronics retailer. Further, in cases where we have previously granted a particular satellite access to the United States to provide DTH/DBS or other receive-only services, we will allow the earth station applicant to include an exhibit citing to the previous Commission grant of access for that satellite and stating that it intends to use the satellite to provide the same services as those previously authorized.

205. Last, the Commission currently exempts receive-only earth stations operating with the INTELSAT K satellite or receiving Intelsat I services from INTELSAT satellites from the licensing requirement.³⁸⁰ We will continue this policy for this limited class of receive-only earth stations.

5. Changes to Application Form

Background and Positions of the Parties

206. In the *Further Notice*, the Commission requested comment on any changes it should make to FCC Form 312 (Application for Satellite Space and Earth Station Authorizations), in light of rules or policies adopted in this *Report and Order*. Loral suggests two changes to make the application form consistent with the United States' WTO commitments: (1) request whether services to be provided by an FSS operator include broadcast video programming services for direct reception by customers; and (2) require applicants to provide copies of Appendix 4 and S4, as submitted to the ITU, as additional information on satellite system parameters.³⁸¹ PanAmSat argues that in addition to the service to be provided, the country in which the satellite is licensed or will be licensed, countries in which signals carried over the satellite will originate or terminate, and information regarding *de jure* and *de facto* entry barriers, Form 312 should require applicants to identify whether the non-U.S. satellite is owned, operated, or controlled by an IGO affiliate that was created after the release date of the *Further Notice*.³⁸² PanAmSat asserts that this information will assist the Commission in ensuring that grant of the application will not pose a competitive threat to the U.S. market.

Discussion

207. To make it easier for foreign applicants to know what information and exhibits are necessary to provide with a request to access the United States, we will modify Form 312 to cover non-U.S. licensed satellites as well as U.S. licensed satellites. To this end, we will

³⁸⁰ 47 CFR § 25.131(j).

³⁸¹ Loral FNPRM Comments at 33.

³⁸² PanAmSat FNPRM Comments at 9-10.

add questions to the Form concerning the licensing administration, route markets to be served (for DTH/DBS/DARS services, satellites licensed by non-WTO Members) and type of service to be provided, and requesting an ECO-Sat analysis, where necessary. We will also add a question regarding ownership information, which was inadvertently omitted in adopting Form 312, and is to be answered by *all* applicants, including U.S. applicants.

208. We will not incorporate into Form 312 a requirement that prospective suppliers file their ITU submissions for the satellite, as Loral suggests. As discussed, the ITU information does not include all the information required by Part 25 of the rules. If ITU coordination has been completed, however, we will not require the prospective foreign entrant to file *any* technical information.

209. Finally, we will not require an applicant to provide any additional ownership information regarding IGO affiliates, as PanAmSat advocates. As discussed above, the Commission has decided in this rulemaking to treat IGO affiliates the same as applicants from other countries.³⁸³ Parties, of course, may raise anticompetitive concerns regarding the grant of any application, which we will duly consider.

6. Global Mobile Personal Communications Systems

210. In the *Further Notice*, the Commission noted that the ITU World Telecommunications Policy Forum held in October 1996 adopted a draft Memorandum of Understanding (MoU) establishing a working group to develop arrangements to facilitate the free circulation of global mobile personal communications (GMPCS) terminals. The Commission asked whether these arrangements would impact the Commission's licensing process for mobile terminals.³⁸⁴

211. Lockheed Martin and Loral contend that adoption of the GMPCS MoU does not impact our licensing scheme for blanket licenses for mobile terminals accessing a non-U.S. system,³⁸⁵ although Lockheed Martin also suggests that it may be appropriate to consider whether the home market is a signatory to the Memorandum.³⁸⁶

212. We agree that the GMPCS MoU does not alter our blanket licensing scheme for mobile earth terminals. Indeed, the MoU recommends blanket or class licensing for GMPCS terminals. Nevertheless, signatories to the MoU retain the authority to regulate their

³⁸³ See *supra* Section III.B.1.d.

³⁸⁴ *Further Notice* at ¶ 59.

³⁸⁵ Loral FNPRM Comments at 28.

³⁸⁶ Lockheed Martin FNPRM Comments at 5.

telecommunications industries. Further, implementation of the arrangements or any of their provisions is voluntary.

D. Enforcement

213. Though the Commission did not specifically address enforcement issues in the *Notice* or *Further Notice*, GE Americom asserts that a "critical factor in the success of the Commission's policies in promoting competition" will be its ability to address competitive issues that may arise due to a foreign operator's failure to operate in accordance with technical and service requirements.³⁸⁷ GE Americom contends that we must monitor ongoing compliance with our rules and revoke any authorizations or impose conditions on authorizations as warranted.³⁸⁸ It suggests that the Commission provide a forum for consideration of these issues, but does not specify how such a forum should be administered.³⁸⁹ Similarly, Space Communications urges us to impose severe penalties on satellite operators violating any route limitations included in their U.S. earth station license.

214. We agree that it is paramount that all operators providing satellite service in the United States comply with Commission rules and policies applicable to that particular satellite service. In addition, we often attach specific conditions to licenses relating to operating requirements, system implementation requirements, and technical parameters. Entities violating the terms of their license are subject to administrative penalties, including monetary forfeitures and license revocation.³⁹⁰ We will continue our efforts to ensure compliance by all providers, whether U.S. or foreign, and to impose sanctions when appropriate. As always, we will fully explore any allegations of rule or license violations that are brought to our attention.

E. Consistency with GATS Obligations

Position of the Parties

215. A number of commenters question whether our proposed framework for evaluating requests to serve the U.S. via non-U.S. satellites is compatible with U.S. GATS obligations.³⁹¹ The European Commission argues that the proposed public interest test is not

³⁸⁷ GE Americom FNPRM Comments at 8.

³⁸⁸ *Id.*; GE Americom FNPRM Reply Comments at 8-9.

³⁸⁹ GE Americom FNPRM Comments at 8-9.

³⁹⁰ See 47 U.S.C. § 501; 47 CFR § 1.80.

³⁹¹ See, e.g., ICO FNPRM Reply Comments at 5; Deutsche Telekom FNPRM Reply Comments at 2; European Commission FNPRM Reply Comments at 1-2.

compatible with GATS principles of objectivity, nondiscrimination, and transparency, nor with MFN obligations and market access commitments. The European Commission further states that the U.S. decision to conclude the WTO Basic Telecom Agreement indicates that WTO Members already satisfy U.S. public interest objectives and, therefore, the Commission should not apply a public interest test to WTO Members.³⁹² France Telecom notes that the broad public interest criteria violates the U.S. market access commitments.³⁹³ The Government of Japan states that the GATS does not allow application of a public interest test in a way that is inconsistent with the GATS. In addition, the Government of Japan urges the Commission to establish a period of time normally required to reach a decision concerning an application, as required by the Reference Paper.³⁹⁴

216. USTR asserts that the Commission can apply the public interest test and that no Members participating in the WTO basic telecom negotiations can claim surprise at its continued use.³⁹⁵ USTR argues that the United States did not give up its right to enforce domestic laws, regulations, and policies when it joined the WTO or agreed to the WTO Basic Telecom Agreement. According to USTR, the United States and other WTO Members remain entirely free to pursue legitimate policy objectives, such as the protection of competition, national security interests, law enforcement, foreign policy and trade concerns.³⁹⁶

Discussion

217. We conclude that application of the public interest test with respect to authorizations to access non-U.S. satellites is consistent with the GATS for several reasons.³⁹⁷ First, we find unpersuasive the European Commission's conclusion that the U.S. decision to conclude the WTO Basic Telecom Agreement alone satisfies our public interest analysis. The United States' decision to participate in the WTO Basic Telecom Agreement relates only to its trade obligations and does not replace our separate statutory mandate to determine that grant would otherwise serve the public interest, convenience and necessity. Second, we find unpersuasive arguments that considering the public interest when evaluating requests by non-

³⁹² European Commission FNPRM Reply Comments at 1-2.

³⁹³ France Telecom FNPRM Reply Comments at 2.

³⁹⁴ Government of Japan FNPRM Comments 4.

³⁹⁵ USTR Foreign Participation Comments at 9.

³⁹⁶ *Id.*

³⁹⁷ In reaching this conclusion, we rely on the expertise of USTR, which has primary responsibility for issuing and coordinating guidance on interpretation of U.S. trade obligations. See 19 U.S.C. § 2171(c)(1) (The USTR "shall issue and coordinate policy guidance to departments and agencies on basic issues of policy and interpretation arising in the exercise of international trade obligations considered under the auspices of the WTO.")

U.S. satellites violates the United States' national treatment and MFN obligations under the GATS. The Commission has applied a public interest analysis as part of its regulatory structure since the Communications Act was passed in 1934. In fact, consideration of the public interest is fundamental in carrying out the general powers of the Commission.³⁹⁸ We thus find unconvincing arguments that consideration of the public interest violates the U.S. national treatment or the MFN obligation.

218. Third, we find unconvincing the arguments of the European Commission and France Telecom that the public interest test violates the U.S. market access commitments. We note USTR's comment that the negotiating history of the GATS shows that Article XVI (Market Access) does not prohibit all domestic regulation of basic telecom services.³⁹⁹ Rather, Article XVI only prohibits Members from maintaining or adopting the types of unscheduled limitations and measures defined in GATS Article XVI. We find that because the public interest analysis is neither a quantitative nor an economic-needs based limitation set out in Article XVI, there is no need for the United States to have included the test as a limitation on its market access commitments in its Schedule of Specific Commitments.⁴⁰⁰

IV. ADMINISTRATIVE REQUIREMENTS

A. Regulatory Flexibility Act

219. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603 (RFA), the Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) in the *Notice* and *Further Notice*. The Commission's Final Regulatory Flexibility Analysis (FRFA), Appendix D of this *Report and Order*, conforms to the RFA, as amended by the Contract with America Advancement Act of 1996 (CWAAA), Pub. L. No. 104-121, 110 Stat. 847 (1996).⁴⁰¹

B. Paperwork Reduction Act

220. This *Report and Order* contains new or modified information collections. A request for clearance of the information collections proposed in the *Further Notice* was

³⁹⁸ See 47 U.S.C. § 303.

³⁹⁹ See USTR Foreign Participation Comments at 7, n.13 (citing GATS Secretariat, "Initial Commitments in Trade Services: Explanatory Note," MTN.GNS/W/164 (September 3, 1994)).

⁴⁰⁰ *Id.* at 8.

⁴⁰¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract with America Advancement Act (CWAAA) of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

submitted to Office of Management and Budget (OMB) and approved on October 13, 1997.⁴⁰² The changes to the approved information collection adopted in this *Report and Order* will be submitted to OMB and will become effective upon approval by OMB.

V. CONCLUSION

221. In this *Report and Order*, we adopt a new standard for foreign participation in the U.S. satellite services market and implement the United States' obligations under the WTO Basic Telecom Agreement. The common sense rules and procedures we establish will provide opportunities for foreign entities to deliver satellite services in this country. The liberalized market conditions that will result from the WTO Basic Telecom Agreement will allow U.S. companies to enter previously closed foreign markets. These joint initiatives will benefit U.S. consumers by increasing the availability of various satellite services, providing more alternatives, reducing prices, and facilitating technological innovation. This new environment will encourage a more competitive satellite market in the United States, as well as spur development of broader, more global satellite systems. It will also foster greater opportunity for communications across national boundaries by making it easier for consumers worldwide to gain access to people, places, information, and ideas.

VI. ORDERING CLAUSES

222. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 2, 4(i), 303(r), 308, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 303(r), 308, 309, and 310, the policies, rules and requirements discussed herein ARE ADOPTED and Part 25 of the Commission's rules, 47 CFR Part 25, IS AMENDED as set forth in Appendix C.

223. IT IS FURTHER ORDERED that authority is delegated to the Chief, International Bureau as specified herein, to effect the decisions as set forth above.

224. IT IS FURTHER ORDERED that the Commission's Office of Managing Director shall send a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

225. IT IS FURTHER ORDERED that the amendments to Part 25 of the Commission's rules, 47 CFR Part 25, FCC Form 312 and the Commission's policies, rules and requirements established in this *Report and Order* shall take effect thirty days after publication in the Federal Register, or in accordance with the requirements of 5 U.S.C. § 801(a)(3) and 44 U.S.C. § 3507, whichever occurs later. The Commission will publish a

⁴⁰² See OMB No. 3060-0678.

notice, following publication of this *Report and Order* in the Federal Register, announcing the effective date of this *Order*. The Commission reserves the right to reconsider the effective date of this decision if the WTO Basic Telecom Agreement does not take effect on January 1, 1998.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script, reading "Magalie Roman Salas".

Magalie Roman Salas
Secretary

APPENDIX A

Commenters on the *Notice of Proposed Rulemaking*

AirTouch Communications (AirTouch)
Alpha Star Television Network, Inc. (Alpha Star)
AMSC Subsidiary Corporation (AMSC)
AT&T Corp. (AT&T)
BT North America, Inc. (BTNA)
Cacaos (Cacaos)
Capital Cities/ABC, Inc., CBS Inc., National Broadcasting Co., Inc., Turner Broadcasting System, Inc. (CC/Networks)
Charter Communications International, Inc. (Charter)
Columbia Communications Corporation (Columbia)
COMSAT Corporation (COMSAT)
DIRECTV, Inc.; DIRECTV International, Inc.; Hughes Communications Galaxy, Inc. (DirecTV)
GE American Communications, Inc. (GE Americom)
General Instrument Corporation (General Instrument)
Home Box Office (HBO)
ICO Global Communications (ICO)
INTELSAT
Japan Satellite Systems, Inc. (Japan Sat)
Keystone Communications Corporation (Keystone)
Kokusai Denshin Denwa Co., Ltd. (KDD)
L/Q Licensee, Inc. and Loral Space Communications, Ltd. (Loral)
Lockheed Martin Corporation (Lockheed Martin)
MCI Telecommunications Corporation (MCI)
Motorola Satellite Communications, Inc. and Iridium, Inc. (Motorola)
National Telecom Satellite Communications, Inc. (NATSAT)
Newcomb Communications, Inc. and Mobile Datacom Corporation (Newcomb)
Orbital Communications Corporation (OrbComm)
Orion Network Systems, Inc. (Orion)
PanAmSat Corporation (PanAmSat)
Space Communications Corporation of Tokyo, Japan⁴⁰³ (Space Communications)
Teledesic Corporation (Teledesic)
TMI Communications and Company, L.P. (TMI)
Transworld Communications (U.S.A.), Inc. (Transworld)
TRW Inc. (TRW)
Western Tele-Communications, Inc. (WTCI)
WorldCom, Inc. (WorldCom)

⁴⁰³ Motion for Late-filed initial Comments and Comments received July 31, 1996.

Reply Commenters on the *Notice of Proposed Rulemaking*

AirTouch Communications
AMSC Subsidiary Corporation
Associated Group Inc. (Associated)
AT&T Corp.
BT North America, Inc.
Capital Cities/ABC, Inc., CBS Inc., National Broadcasting Co., Inc., Turner Broadcasting Systems, Inc.
Charter Communications International, Inc.
Columbia Communications Corporation
COMSAT Corporation
DIRECTV, Inc.
Embassy of Japan (Government of Japan)
GE American Communications, Inc.
GTE Airphone Incorporated (GTE)
ICO Global Communications
INTELSAT
Lockheed Martin Corporation
Loral Space & Communications Ltd.
MCI Telecommunications Corporation
Motion Picture Association of America, Inc. (MPAA)
Motorola Satellite Communications, Inc. and Iridium LLC
National Telecom Satellite Communications, Inc.
Newcomb Communications, Inc. and Mobile Datacom Corporation
News Corporation Limited (News Corp.)
National Telecommunications and Information Administration (NTIA)
Orion Network Systems, Inc.
PanAmSat Corporation
Teledesic Corporation
TelQuest Ventures, Inc. (TelQuest)
Telesat Canada (Telesat)
TMI Communications and Company, LP (TMI)
Transworld Communications (U.S.A.) Inc.
TRW Inc.
U.S. Department of State (State)
Western Tele-Communications, Inc.

APPENDIX B

Commenters on the *Further Notice of Proposed Rulemaking*

ABC, Inc., CBS Inc., National Broadcasting Company, Inc., and Turner Broadcasting Systems, Inc. (Networks)
AirTouch Communications, Inc.
AT&T Corporation
AMSC Subsidiary Corporation
BT North America, Inc.
Columbia Communications Corporation
COMSAT Corporation
Embassy of Japan
GE American Communications, Inc.
Globecast North America Inc.
Hughes Electronics Corporation (Hughes)
ICO Global Communications
Lockheed Martin Corporation
Loral Space & Communications Ltd. and L/Q Licensee, Inc.
Morality in the Media, Inc. (Morality)
Motorola Satellite Communications, Inc. and Iridium LLC
Orion Network System, Inc.
PanAmSat Corporation
QUALCOMM Inc. (Qualcomm)
Secretary of Defense (DOD)
Skybridge LLC (Skybridge)
Teledesic Corporation
Telesat Canada
TMI Communications and Company, LP
TRW Inc.
UTC
Winstar Communication, Inc. (Winstar)

Reply Commenters on the *Further Notice of Proposed Rulemaking*

AMSC Subsidiary Corporation
Columbia Communications Corporation
COMSAT Corporation
Deutsche Telekom AG and Deutsche Telekom, Inc. (Deutsche Telekom)
European Commission (European Commission)
France Telecom (France Telecom)
GE American Communications, Inc.
Hughes Electronics Corporation
ICO Global Communications
Japan Satellite Systems, Inc.
Lockheed Martin Corporation⁴⁰⁴
Motion Picture Association of American, Inc.
Orion Network Systems, Inc.
Panamsat Corporation
Space Communications Corporation
TMI Communications and Company, Limited Partnership
Office of the U.S. Trade Representative (USTR)

⁴⁰⁴ Filed Motion to Leave to File Late Comments

APPENDIX C

Rule Changes to 47 C.F.R. Part 25 of the Commission's Rules

Part 25 of the Commission's Rules and Regulations (Chapter I of Title 47 of the Code of Federal Regulations) is amended as follows:

1. The authority citation for Part 25 continues to read as follows:

Authority: Secs. 25.101 to 25.601 issued under Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 101-104, 76 Stat. 419-427; 47 U.S.C. 701-744; 47 U.S.C. 554.

PART 25-SATELLITE COMMUNICATIONS

2. The Table of Contents for Part 25 is amended to read as follows:

* * * * *

EARTH STATIONS

- | | |
|--------|---|
| 25.130 | Filing requirements for transmitting earth stations. |
| 25.131 | Filing requirements for receive-only earth stations. |
| 25.132 | Verification of earth station antenna performance standards. |
| 25.133 | Period of construction; certification of commencement of operation. |
| 25.134 | Licensing Provisions of Very Small Aperture Terminal (VSAT) Networks. |
| 25.135 | Licensing provisions for earth station networks in the non-voice, non-geostationary mobile-satellite service. |
| 25.136 | Operating provisions for earth station networks in the 1.6/2.4 GHz mobile-satellite service. |
| 25.137 | Application requirements for earth stations operating with non-U.S. licensed space stations. |

* * *

* * * * *

3. Section 25.113 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 25.113 Construction Permits

* * * * *

(b) Construction permits are not required for satellite earth stations that operate with U.S.-licensed or non-U.S. licensed space stations. * * *

* * * * *

4. Section 25.115 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 25.115 Applications for earth station authorizations

* * * * *

- (c) Large Networks of Small Antennas operating in the 12/14 GHz frequency bands with U.S.-license¹ or non-U.S. licensed satellites for domestic services. * * *

* * * * *

5. Section 25.130 is amended by revising the first sentence of paragraph (d) to read as follows:

§ 25.130 Filing requirements for transmitting earth stations

* * * * *

- (d) Transmissions of signals or programming to non-U.S. licensed satellites, and to and/or from foreign points by means of U.S.-licensed fixed satellites may be subject to restrictions as a result of international agreements or treaties. * * *

* * * * *

6. Section 25.131 is amended by revising paragraphs (b) and (j) to read as follows:

§ 25.131 Filing requirements for receive-only earth stations.

* * * * *

- (b) Except as provided in paragraph (j) of this section, receive-only earth stations in the fixed-satellite service that operate with U.S.-licensed satellites may be registered with the Commission in order to protect them from interference from terrestrial microwave stations in bands shared co-equally with the fixed service in accordance with the procedures of §§ 25.203 and 25.251-25.256 of this part.

* * * * *

- (j) Receive-only earth stations operating with non-U.S. licensed space stations shall file an FCC Form 312 requesting a license or modification to operate such station. Receive-only earth stations used to receive INTELNET I service from INTELSAT space stations need not file for licenses. See Deregulation of Receive-Only Satellite Earth Stations Operating with